



Serial No. 09/871230

PATENT

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

Applicant: Vilhemsson et al. Examiner: Quyen Phan Leung
Serial No.: 09/871230 Group Art Unit: 2828
Filed: May 31, 2001 Docket No.: 00980.1083-US-01
Title: APPARATUS AND METHOD FOR CONTROLLING THE OPERATING
WAVELENGTH OF A LASER DIODE

11/ Election
3/25/03
P. W. A. L.

CERTIFICATE UNDER 37 C.F.R. 1.8: The undersigned hereby certifies that this Transmittal Letter and the paper, as described herein, are being deposited in the United States Postal Service, as first class mail, with sufficient postage, in an envelope addressed to: Assistant Commissioner for Patents, Washington, D.C. 20231 on March 12, 2003.

Iain A. McIntyre
Name

Signature

RESPONSE TO RESTRICTION REQUIREMENT

Assistant Commissioner for Patents
Washington, D.C. 20231

Dear Sir:

In the requirement to elect species dated February 12, 2003, the following species were identified:

- Species I - Figure 1
- Species II - Figure 6
- Species III - Figure 7
- Species IV - Figure 9
- Species V - Figures 10A-10B
- Species VI - Figures 11A - 11B

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Applicants hereby elect, with traverse, Species 1, illustrated in FIG. 1. The claims readable on Species 1 include claims 1-94.

Furthermore, it was stated that no claim was found to be generic.

Applicants traverse the requirement to elect species because the determination of species is improper. Claims to be restricted to different species must be mutually

exclusive (MPEP § 806.04(f)). The general test for when claims are to be so restricted is that one claim recites limitations which under the disclosure are found in a first species but not in a second species, while a second claim recites limitations disclosed only for the second species and not for the first (MPEP § 806.04(f)). It is important to note that there is a difference between showing different embodiments of an invention and different species that are mutually exclusive of each other.

The determination of the species in the instant case does not meet this test of mutual exclusivity. As an illustrative example, Figure 1 schematically illustrates an optical configuration of a laser and a non-parallel etalon used for wavelength locking, according to an embodiment of the present invention. Figure 6 schematically illustrates a system for adjusting and stabilizing the wavelength of a tunable laser, several features of which are applicable for use in the optical configuration of Figure 1. In particular, Figure 1 is directed more to the optical configuration, whereas Figure 6 is directed more to the control aspects of the wavelength locker. Therefore, these Species I and II are not mutually exclusive of each other.

Figure 7 shows steps in an algorithm useful for wavelength locking. The algorithm might be implemented in the systems of Figures 1 and/or 6. Therefore, Species III is not mutually exclusive of Species I and II.

Figure 9 schematically depicts a detector configuration used with circular fringes produced by a non-planar etalon. Such a detector configuration may be used in the systems illustrated in Figures 1 and/or 6, and may be used along with a control algorithm as shown in Figure 7. Therefore, Species IV is not mutually exclusive of Species I - III.

Figures 10A - 10B schematically show detector configurations used with linear fringes - such configurations may be used in the systems illustrated in Figures 1 and/or 6, and may be used along with a control algorithm as shown in Figure 7. Therefore, Species V is not mutually exclusive of Species I - III.

Figures 11A and 11B show one particular approach for physically implementing an etalon in a wavelength locker system. Such an approach may be used in the systems of Figures 1 and/or 6, may be used with a control algorithm as listed in Figure

7, or may be used with the detector configurations of Figure 9 or Figures 10A and 10B. Therefore, Species VI is not mutually exclusive of Species I - V.

The test of mutual exclusivity for the different species has not been met.

All of the present claims read on elected Species 1, further illustrating the fact that determination of species is in error. Furthermore, Applicants respectfully assert that it would not be an undue burden on the Examiner to search and examine all the species listed. Many of the listed species are not mutually exclusive, and so would not present an extra burden to the Examiner.

If the Examiner disagrees with the contention herein that the species election is improper, the Examiner is requested to state reasons why the particular species identified are mutually exclusive of each other.

Accordingly, since the identification of species is improper, Applicants respectfully request that the requirement to elect species be withdrawn and that the instant application continue to examination.

Regarding the generic claims, there are several claims that are generic to the species identified by the Examiner. For example, claims 17, 33, 47, 69, 75, 76, 85, 86 and 94 read on all the identified species.

Any questions regarding this communication should be directed to the undersigned attorney at 952-253-4110.


Respectfully submitted,

Altera Law Group, LLC



Date: March 12, 2003

By:


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IAM/vlb